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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

HMO/151622

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 22, 2013, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by iCare Independent Health Plan (iCare) and the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether iCare correctly reduced Petitioner's Personal Care Worker (PCW) hours.

NOTE: The record was held open until September 20, 2013 to give Petitioner an opportunity to submit some additional medical records. These have been marked as Exhibit 4 and entered into the record. The record was held open until September 27, 2013, to give iCare an opportunity to respond. However, Petitioner's medical records were not forwarded to iCare until October 17, 2013. Consequently, the deadline for iCare's response was extended to October 30, 2013. On October 30, 2013, iCare submitted its response. It has been marked as Exhibit 5 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Elizabeth Bartlett, General Counsel  
iCare  
1555 N. Rivercenter Drive  
Suite 206  
Milwaukee, WI 53212

Also Present: Lucy Miller, DHS RN Consultant

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is enrolled in an HMO, iCare Independent Health Plan (iCare).
2. Petitioner is 44 years old and lives with her spouse. (Exhibit 3, attachment 1)
3. Petitioner had a knee replacement and suffers chronic pain in her hip, knee and toes. Petitioner is five feet tall and weighs 157 pounds. Petitioner also had a history of falling. (Exhibit 3, attachment 1; Exhibit 4, treatment notes dated 4/9/13 and 6/18/13; Exhibit 5, October 16, 2013 note from iCare nurse's hotline.)
4. Petitioner receives PCW services from Metro Home Health Services, Inc. (Exhibit 2, pg. 24; Exhibit 3, attachment 1)
5. On June 12, 2013, a nurse from Metro Home Health Services, Inc., completed a personal care screening tool (PCST). (Exhibit 3, attachment 1)
6. On July 1, 2013, Metro Home Health Services submitted a request for prior authorization to iCare, seeking 12 units of PCW services per day for 180 days with 180 units of travel time to cover the 180 days. (Exhibit 3, attachment 1)
7. After completing a "paper review", iCare approved the request for 12 units of PCW services for the period of July 15, 2013 through August 28, 2013, the period in which it was going to conduct an in-home review. (Exhibit 1, pg. 2; Testimony of Margaret White)
8. On August 8, 2013, Stephanie [REDACTED] an occupational therapist with Health Reach Rehabilitation, did an in-home assessment of Petitioner at iCare's request. (Testimony of Margaret White; Exhibit 3, attachment 4) Petitioner's personal care worker, Marcus [REDACTED], was present. (Testimony of Mr. [REDACTED])
9. On August 15, 2013, iCare sent Petitioner a notice indicating that her PCW hours were going to be reduced from 12 units (3 hours) per day to 4 units (1 hour) per day effective August 29, 2013. iCare further indicated that it was approving 180 units (45 hours) of travel time for the PCW. (Exhibit 1, pg. 2)
10. Petitioner filed a request for fair hearing that was received on August 22, 2013.

### **DISCUSSION**

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner requested 12 units (3 hours per day) of PCW hours. After initially approving this time, iCare reduced the time to 4 units (1 hour) per day.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In general, in prior authorization cases, the person seeking authorization bears the burden to prove their request meets approval criteria. However, in this case, the requested services were initially approved, then iCare sought to change the status quo. In such a situation, iCare bears the burden to prove it acted correctly.

In determining how many hours of personal care services an individual is allowed, the service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal> under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This can also be found at the aforementioned website. A copy of the table was also included Exhibit 3, attachments 3 and 5. The Personal Care Activity Time Allocation Table lists the maximum allowable time for each activity.

Cindy Zander, a nurse consultant for the Department of Health Services, reviewed Petitioner's case and determined that iCare allotted the following times for Petitioner's cares:

1. Bathing	once per day, 30 minutes per day
2. Dressing Upper Body	Zero minutes
3. Dressing Lower Body	once per day, 10 minutes per day
4. Knee brace removal	once per day 10 minutes per day
5. Grooming	once per day 5 minutes per day
6. Eating	Zero minutes per day
7. Mobility	Zero minutes per day
8. Toileting	Zero minutes per day
9. Transfers	Zero minutes per day
10. Medication Assistance	Zero minutes per day

#### BATHING

There is no dispute regarding the time allotted for bathing.

#### DRESSING UPPER BODY

There is no dispute that Petitioner can dress her upper body herself.

#### DRESSING LOWER BODY

With regard to dressing her lower body, the PCST indicated that Petitioner's level of need is at level "C" because she requires, "constant supervision and physical intervention to ensure task completion" and that her, "left knee remains unstable and patient falls due to leg gain [sic] out." (Exhibit 3, attachment 1)

It is reasonable to question the accuracy of the PCST, because the medical records submitted by Petitioner indicate that between August 2013 and September 2013, Petitioner had not reported any falls, nor did she report her knee giving out on her. (See Exhibit 4, treatment notes dated 6/18/13, 8/13/13 and 9/11/13) I note, however, that iCare submitted a log from its nurse's hotline, indicating Petitioner called on October 16, 2013 and reported that her knee gave out and she fell onto both knees, injuring them. I also note that without the testimony of a medical professional, it is unclear whether the prior absence of falls or

Petitioner's knee giving out was due to Petitioner's ability to be stable, or whether it was because she was previously receiving assistance with her ADLs.

Ms. [REDACTED]'s August 8<sup>th</sup> evaluation indicated Petitioner's need to be at level "D", because she cannot reach down to put her pants on. (Exhibit 3, attachment 4) For either level "C" or level "D", the Personal Care Activity Time Allocation Table allows for a maximum of 10 minutes per episode, although one episode of dressing is included in time for bathing. (Exhibit 3, attachments 2 and 5) Petitioner's personal care worker testified credibly that it takes about 10-15 minutes to dress Petitioner's lower body, so the time allotted by iCare is not unreasonable.

#### KNEE BRACE REMOVAL

There is no dispute that it takes about 10 minutes for Petitioner to remove her knee brace.

#### GROOMING

With regard to grooming, the Personal Care Screening Tool indicated that Petitioner requires assistance at level "D"; even though she can groom herself, she needs assistance setting up her supplies. (Exhibit 3, attachment 1) Ms. [REDACTED]'s report indicates the same. (Exhibit 3, attachment 4) The Personal Care Activity Time Allocation Table indicates that 5 minutes are allowed for this task up to twice a day, but one grooming incident is included in the 30 minutes allotted for bathing, "when the only assistance with grooming the PCW will provide are activities the PCW will provide during bathing e.g. face, hands and feet, and deodorant application". (Exhibit 3, attachment 2)

It is not unreasonable to conclude that Petitioner brushes and/or flosses her teeth twice a day and that oral care is not part of her bathing time. As such, a second episode of grooming set up would be allowable. I note that Petitioner's personal care worker testified that it takes 20-30 minutes a day to set up and clean-up for Petitioner when she engages in grooming activities. However, time to clean up is taken into consideration when calculating time for incidental tasks. (See the On-line Provider Handbook topic #3167). Thus, allowing a total of 10 minutes per day for grooming set-up is appropriate.

#### EATING

With regard to eating, the personal care screening tool indicates Petitioner requires assistance with eating at level "C", three times a day, because she needs assistance with set up. (Exhibit 3, attachment 1) The Personal Care Activity Time Allocation Table allows for 5 minutes of services, 3 times a day for individuals assessed at level "C". Ms. [REDACTED] the occupational therapist, assessed Petitioner's need to be at level "A", for which no PCW time is allowed. (Exhibit 3, attachment 4) However, Ms. [REDACTED] did not have any notes under eating, was not at the hearing to testify and as such, could not explain why her findings differed from those of the nurse who completed the PCST. Petitioner's PCW testified that Petitioner can feed herself and does not have issues with choking, but that she does need assistance with setting up meals.

Petitioner's PCW gave credible testimony. Being faced with two competing hearsay documents (the PCST completed by the Metro Home Health Services and the evaluation by Ms. [REDACTED]) and the live credible testimony of the PCW who sees Petitioner every day, I am inclined to give the greatest weight to the live testimony. Based upon the foregoing, it is appropriate to allocate 15 minutes per day for eating.

It should be noted that Petitioner's PCW also testified that he assists with meal preparation, but that is not included in eating, although some time for meal preparation is included in the time allotted for incidental tasks. (See Exhibit 3, attachment 2; On-line Provider Handbook topic #3167 )

### MOBILITY

With regard to mobility, the PCST indicated Petitioner's need to be at level "C" because she needs, "constant supervision and physical intervention..." The PCST further indicated that Petitioner has been falling due to her left knee giving out. (Exhibit 3, attachment 1) As discussed above, Petitioner submitted some of her medical records (Exhibit 4) which note that between June and September 2013, Petitioner did not report her knee giving out or having had any falls, although it is unclear from the record whether the absence of falling was due to the fact that she had assistance with mobility, or whether she was actually able to move about on her own.

Ms. [REDACTED]'s evaluation indicated that Petitioner is at level "A"; that she is able to move about with a cane, or sometimes with a walker on a bad day; and that Petitioner walks slowly, but is stable. (Exhibit 3, attachment 4) No time is allowed per the Personal Care Time Allocation Table for individuals whose need is at level "A"

Petitioner's PCW testified that Petitioner does move about with a cane, crutches or walker, but that he does need to assist Petitioner by getting her up on her feet and bringing her cane, walker or crutches. Petitioner's PCW also testified that he walks with Petitioner to make sure she doesn't lose her balance.

It is unclear from the record why Petitioner could not keep the cane, walker or crutches nearby so her PCW does not have to fetch them, or why she is unable to use them to get up on her feet. In addition, it is not clear from the record why the cane, crutches or walker are not sufficient to help Petitioner keep her balance. In the absence of reliable evidence explaining this, iCare's denial of PCW time for this task must be sustained, because the PCW's testimony supports the finding of Ms. [REDACTED].

### TOILETING

With regard to toileting, the Personal Care Screening Tool indicated that Petitioner did not need assistance with toileting, as did Ms. [REDACTED]'s evaluation. Ms. [REDACTED]'s evaluation under Dressing Lower body indicated that Petitioner has difficulty reaching her feet to don pants. Petitioner's Personal Care worker testified that Petitioner can use the bathroom on her own, but that she needs help getting her pants down and up.

Given the undisputed fact that Petitioner needs assistance dressing her lower body, it is reasonable to conclude that she would need help getting her pants/panties down and up when she uses the bathroom. This type of assistance would fall under level "C". According to the Personal Care Activity Time Allocation Table, 10 minutes per incident is allowed, up to 9 incidents per day. There is no indication that Petitioner needs to use the bathroom so frequently, so time for two incidents (20 minutes per day; once in the morning when PCW is there and once in the evening when the PCW is there) will be allowed.

### TRANSFERS

The personal care screening tool indicated that Petitioner's need with transfers was at a level "C", stating that she needed constant supervision and that her left knee would give out. (Exhibit 3, attachment 1) Ms. [REDACTED]'s assessment placed Petitioner's need at level "A", but does not provide any explanation for her assessment. Petitioner's personal care worker indicated that he does provide assistance to Petitioner when she gets out of bed, but again indicated that this was assistance in getting Petitioner her cane, crutches or walker and getting her to her feet.

As discussed above, it is unclear from the record why Petitioner could not keep the cane, walker or crutches nearby so her PCW does not have to fetch them, or why she is unable to use them to get up on

her feet. In addition, it is not clear from the record why the cane, crutches or walker are not sufficient to help Petitioner keep her balance. In the absence of reliable evidence explaining this, iCare's denial of PCW time for this task must be sustained.

### MEDICALLY ORIENTED TASKS

Ms. [REDACTED]'s evaluation does not contain any comments about Petitioner's ability to administer her medications herself. (Exhibit 3, attachment 4) Petitioner's PCW testified that he does set up Petitioner's pill box for her. The PCST indicates that Petitioner requires medication reminders once per day. (Exhibit 1, attachment 1) However, the physician's order attached to the PCST does not contain an order for any medically oriented tasks. (Exhibit 3, attachment 1) In the absence of a physician's order for medically oriented tasks, iCare's denial of PCW time for those tasks must be sustained. (See the On-Line Provider Handbook Topics 11477 and 11497)

### INCIDENTAL TASKS

Per the on-line Provider Handbook, topic 3167, time equal to  $\frac{1}{4}$  of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated for incidental cares such as light meal preparation, incidental laundry, or light cleaning after bathing, grooming, or toileting Petitioner. The DHCAA allowed for this time, although some adjustment needs to occur, given the aforementioned additions to Petitioner's personal care service hours.

The actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing	once per day	30 minutes per day
2. Dressing Upper Body	Zero minutes	
3. Dressing Lower Body	once per day,	10 minutes per day
4. Knee brace removal	once per day	10 minutes per day
5. Grooming	once per day	5 minutes per day
6. Eating	5 minutes x 3 times per day	15 minutes per day
7. Mobility	Zero minutes per day	
8. Toileting	10 minutes x 2 times per day	20 minutes per day
9. Transfers	Zero minutes per day	
10. Medication Assistance	Zero minutes per day	
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		Total: 90 minutes per day

One fourth of 90 minutes is 22.5 minutes. So, Petitioner may receive an additional 22.5 minutes per day to attend to incidental activities.

90 minutes per day for ALDs and MOTs  
22.5 minutes for incidental services

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112.5 minutes per day

112.5 minutes per day  $\div$  15 = 7.5 units per day that may be approved.

### CONCLUSIONS OF LAW

iCare incorrectly reduced Petitioner's PCW hours to 1 hour / 4 units per day.

**THEREFORE, it is**

**ORDERED**

That iCare partially restore Petitioner's personal care service hours to 1.875 hours/ 7.5 units per day, effective August 29, 2013 through January 10, 2014. iCare shall take all administrative steps necessary to complete this task within ten days of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

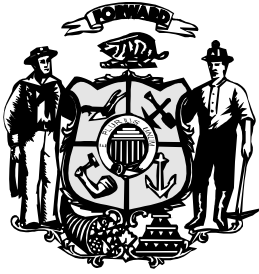
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of October, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 31, 2013.

iCare  
Division of Health Care Access and Accountability